

July 13, 2005
Case No. GP-301724 (2760/29)
Serial No.: 09/992,855
Filed: November 5, 2001
Page 6 of 9

– REMARKS –

A. Claims 1, 5-8, 10-16 and 18-21 were rejected under 35 U.S.C. §102(e) as anticipated by Parsa

The §102(e) rejection of claims 1, 5-8, 10-16, and 18-21 is traversed. In order to maintain this rejection, each and every element of the claims must be taught or suggested by the reference in at least as great detail as claimed. Because *Parsa* does not teach or suggest “sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination,” (as claimed in claims 1, 16 and 20) this rejection must fall.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1989). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1990).

Parsa discloses a closed loop power control for common downlink transport channels. At most, *Parsa* discloses controlling the power level of a modem signal. In contrast, the claim requires sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination. Thus, *Parsa* discloses adjusting a power level, while the claim requires at least an adjustment to the modem carrier level.

The Examiner’s allegation that he “interpreted the modem carrier level as a power level or signal strength” is specious. A modem carrier level is not a power level or signal strength. Instead, a modem carrier is generated by a processor (specification, page 9, lines 25-30, inter alia) in response to a call. A modem carrier level relates to an audio power or voltage amplitude of the modem carrier (page 10, lines 7-9).

Since the Examiner’s ‘interpretation’ of the claimed modem carrier level is not in accord with either Applicant’s definition, or the common and customary meaning of the term, Applicants request withdrawal of the rejections to claims 1, 5-8, 10-16, and 18-21.

July 13, 2005
Case No. GP-301724 (2760/29)
Serial No.: 09/992,855
Filed: November 5, 2001
Page 7 of 9

With respect to claim 2, Parsa does not teach or disclose that the modem carrier level instruction comprises a modem carrier level parameter. At most, Parsa discloses that system parameters are received from a continuously transmitted BS broadcast control channel which is broadcast by all base stations. See, Parsa, column 7, lines 56-59. The Parsa parameters are the loading of all the base stations in the vicinity of the MS, their antenna characteristics, spreading codes used to spread the downlink transmitted information, timing information and other control information. See, column 7, lines 61-65. Likewise, Parsa does not disclose, explicitly or inherently, that the modem carrier level parameter comprises a range between one and eight bits of the modem carrier level instruction, as claimed in claim 3.

Because Parsa does not disclose each and every element of claims 1, 16 and 20, the §102(e) rejection should be withdrawn. Claims 2-8 and 10-21 depend directly or indirectly from claims 1 or 16, and are therefore patentable over the references for at least the same reasons.

Withdrawal of the rejections to claims 1, 5-8, 10-16, and 18-21 is requested.

B. Claims 2-4 and 17 were rejected under §103(a) as unpatentable over Parsa in view of Mannering

The §103(a) rejection of claims 2-4 and 17 is traversed.

Claims 2-4 and 17 depend from claims 1 or 16 respectively and are therefore patentable over the prior art for at least the same reasons.

Additionally, however, there can be no motivation to combine the references, and one of ordinary skill in the art would not be motivated to consult Mannering to address the problems faced by the inventors.

Specifically, Mannering teaches variable scaling of 16-bit fixed point fast fourier forward and inverse transforms to improve precision for implementation of discrete multitone for asymmetric digital subscriber loops. However, Mannering teaches only use of the system over POTS networks, rather than the claimed "wireless communication system." See, e.g. FIGS 1C and 2B, inter alia.

July 13, 2005
Case No. GP-301724 (2760/29)
Serial No.: 09/992,855
Filed: November 5, 2001
Page 8 of 9

Importantly, the distinction between wireless and POTS networks is relevant because the modem carrier level is "affected by the signal level variations, which are *caused predominately by the wireless carrier*, and to a lesser extent, by the land-based network and the phone hardware." See, specification, page 3, lines 1-4 (emphasis added). Thus, one of ordinary skill in the art would not be motivated to consult a POTS reference because the *problem being addressed is not present to a significant degree* in a POTS network. Therefore, Mannering would not be considered analogous art or helpful to those of skill in the art presented with these problems.

The combination of Parsa and Mannering is improper, and there can therefore be no motivation to combine the references. Withdrawal of the rejections to claims 2-4 and 17 is requested for at least these reasons.

C. Claim 9 was rejected under 35 U.S.C. §103(a) as unpatentable over Parsa in view of Westerlage

The §103(a) rejection of claim 9 is traversed. Claim 9 depends from 8 and indirectly depends from claim 1, and is therefore patentable over Parsa in view of Westerlage for at least the same reasons as claim 1. Withdrawal of the rejection to claim 9 is requested.

July 13, 2005
Case No. GP-301724 (2760/29)
Serial No.: 09/992,855
Filed: November 5, 2001
Page 9 of 9

SUMMARY

The Applicant respectfully submits that claims 1-21 fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain at issue that may best be resolved through a personal or telephonic interview, the examiner is respectfully requested to contact the undersigned at the telephone number listed below.

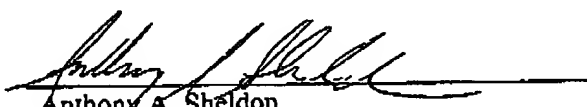
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Respectfully submitted,
RONALD W. FRASER, ET. AL

GENERAL MOTORS CORPORATION
General Motors Legal Staff
Mail Code 482-C23-B21
300 Renaissance Center
P.O. Box 300
Detroit, MI 58265-3000
Phone: (313) 665-4714

Anthony Luke Simon
Registration No. 34,434
Attorney for Applicant

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113



Anthony A. Sheldon
Registration No. 47,078
Attorney for Applicant